



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO. 199 OF 2007

MARITIM BWOGO.....APPELLANT

VERSUS

MOSES BARNO.....RESPONDENT

RULING

On 2/10/2010, this court issued a notice on the appellant under **Order 41 Rule 31(2)** of the **Civil Procedure Rules**, to show cause why this appeal should not be dismissed for want of prosecution. Mr. Kahiga, counsel for the appellant appeared in court on 16/11/2010 and sought time to file an affidavit in reply. He filed the affidavit dated 10/12/2010. Lawrence Karanja, counsel for the appellant deponed that an appeal was preferred from decision of the Land Disputes Appeals Committee Rift Valley Province dated 9/10/07 and all efforts to get the Tribunal file transferred from Molo to Nakuru for preparation of record of appeal have been futile. He deponed that on 22/7/08 they wrote to the Deputy Registrar for an early hearing date which was declined because the lower court file had not been received (LMK II). Further request was made on 17/11/2010 after which they learnt of the notice to show cause. It is the appellant's contention that they have made effort to have the appeal prosecuted but for the lack of the lower court file. It is the appellant's view that the appeal raises issues of law which should be considered on appeal failing which the appellant will be prejudiced.

Mr. Ogolla, counsel for the respondent submitted that since Februarys 2009, no steps have been taken in the appeal. That despite the appellant being given time to file an affidavit, counsel had just been served with a reply an indication of the appellant's lethargy. He urged that the appellant had not demonstrated why the appeal should not be dismissed.

Since this appeal was filed in 2007, the 1st step taken by the appellant's letter of 22/7/08, seeking a date for their application for directions, even before the record of appeal was even prepared. From then nothing was done till 9/2/2009 when the appellant wrote to the Resident Magistrate's Court, Molo, requesting for the lower court file. Thereafter, the appellant went to sleep again. The next letter was written on 17/11/2010 when this notice to show cause had already been taken. I believe the letter was written after the notice to show cause had been served on the appellant's counsel. I find that the appellant has really not done much towards prosecution of this appeal. It is now 4 years since it was filed. Since counsel has appeared and now seems keen to have the appeal heard, the court will allow them 3 months (90 days) within which to have the file procured, record prepared for admission for appeal. In default, the appeal will stand dismissed. Costs to the respondent.

DATED and DELIVERED this 20th day of May 2011.

R.P.V. WENDOH
JUDGE

PRESENT:

No appearance for the Appellant.

.....for the Respondent.

Kennedy – Court Clerk.